

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

NICOLE WIELE
Claimant

ARMOUR ECKRICH MEATS LLC
Employer

APPEAL 15A-UI-00817-LT
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/21/14
Claimant: Appellant (2)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22(2) – Able & Available - Benefits Eligibility Conditions
Iowa Admin. Code r. 871-24.23(10) – Availability Disqualifications – Leave of Absence

STATEMENT OF THE CASE:

The claimant filed an appeal from the January 15, 2015, (reference 01) unemployment insurance decision that denied benefits based upon not being able to or available for work. The parties were properly notified about the hearing. A telephone hearing was held on March 5, 2015. Claimant participated and was represented by Mindi Vervaecke, Attorney at Law. Employer participated through human resource director Jacque Huesman and supervisor Jason Norris and was represented by Andrea Calem, Attorney at Law. Claimant's Exhibits A through G were received. Employer's Exhibits 1 through 18 were received.

ISSUES:

Is the claimant able to and available for work?
Is claimant on a voluntary medical leave of absence?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant is employed full-time as an operator in May 2013, and her last day of work was December 19, 2014. Claimant has a preexisting degenerative disc condition. That condition was aggravated when she was injured at work on May 8, 2014. A contested claim for workers' compensation benefits is pending due to disputed work-relatedness of the injury. Claimant's job as an operator involves moving hams weighing 8 or 13.5 pounds for 8 to 9 hours per day. She reported the injury to her supervisor when she first felt discomfort on May 7 that went away that evening. (Employer's Exhibit 2) On May 8 the pain got worse half way through the day. The employer gave her BioFreeze and sent her to a chiropractor who assigned work restrictions. (Employer's Exhibit 3) The employer accommodated her back injury beginning May 9, 2014, assigning her to light duty computer desk work. On May 29, 2014, she saw Howard Kim, M.D. for the first of six visits. (Employer's Exhibits 4 through 8 and 10, Claimant's Exhibit B) He diagnosed lumbar and right hip strain and prescribed medication and physical therapy. He gave work restrictions of "mainly sitting with no lifting over 5 pounds and avoid bending and twisting." Kim sent claimant for MRI, which showed disc degeneration. Those restrictions were lifted in

August 2014, (Employer's Exhibit 10) but the employer continued to allow her to work light duty and sent her to Abernathy about continued pain. On December 5, 2014, Abernathy determined she had reached maximum medical improvement (MMI) and that her injury did not have an objective basis. (Employer's Exhibit 11) On December 19, 2014, the employer told her Abernathy said her back injury was no longer work related and she could not work without a full release. (Claimant's Exhibit A, p.1) She was unable to perform her regular job duties so employer placed her on a medical leave of absence pending medical release without restrictions and denied her request to remain in light duty work. The employer also denied her request for additional medical care for continued back pain so she began treating with her personal physician Tracy Mixdorf, D.O. (Employer's Exhibits 14 through 17)

Doctor opinion work-related per Mixdorf – (Claimant's Exhibit A, p. 2, Claimant's Exhibit B, p. 14) Abernathy agreed on February 18, 2015, that claimant's spine degeneration was aggravated by her work activity of 'catching hams' while bent over and twisting her trunk. (Claimant's Exhibit A, p. 2) On January 15, 2015, Kim opined the claimant's regular work duties aggravated her preexisting degenerative condition. (Claimant's Exhibit B, p. 14)

Her leaves of absence from November 2013, through May 2014, and again from July 29, 2014, through November 11, 2014, are not related to the back injury. (Employer's Exhibits 9, 12) On February 16, 2015, Mixdorf, D.O. gave her ongoing, but not permanent, work restrictions. (Claimant's Exhibit C, Employer's Exhibit 18) She remains able and willing to return to her light duty job. (Claimant's Exhibit E) The employer has declined to provide light duty work. (Employer's Exhibit 13, Claimant's Exhibit F, G)

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is able to work and available for work effective December 21, 2014.

Iowa Code § 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

Iowa Admin. Code r. 871-24.22(1)a provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

Iowa Admin. Code r. 871-24.23(35) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(35) Where the claimant is not able to work and is under the care of a physician and has not been released as being able to work.

The Court found no separation from employment and allowed partial benefits where claimant's work aggravated chronic lung disease prevented him from full-duty work but he reported daily for assignments as available. *FDL Foods v. Emp't Appeal Bd. and Lambers*, 460 N.W.2d 885 (Iowa Ct. App. 1990).

Inasmuch as the medical condition aggravation was work-related and the treating physician has released the claimant to return to work, even with restriction she has established her ability to work. Because the employer has no work available or is not willing to accommodate the work restrictions, benefits are allowed.

DECISION:

The January 15, 2015, (reference 01) unemployment insurance decision is reversed. The claimant is able to work and available for work effective December 21, 2014. Benefits are allowed, provided she is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/pjs